

**IN THE UNITED STATES BANKRUPTCY COURT FOR  
THE NORTHERN DISTRICT OF MISSISSIPPI**

**IN THE MATTER OF:**

**CHAPTER 13 CASE NO.:**

**BRONJASE M. WILLINGHAM**

**18-10666-JDW**

**OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE**

COMES NOW Locke D. Barkley, Chapter 13 Trustee, by and through counsel, and files this Objection to Notice of Mortgage Payment Change (the "Objection") and in support states as follows:

1. The Debtor<sup>1</sup> initiated this proceeding with the filing of a voluntary petition for relief on February 23, 2018. The Debtor's Chapter 13 plan was confirmed by an Order Confirming Chapter 13 Plan entered on November 15, 2018 (Dkt. #40) (the "Plan").

2. On April 2, 2018, Ditech Financial, LLC, as servicer for U.S. Bank, N.A., as Trustee, successor in interest to Wachovia Bank, National Association, as Trustee, successor by merger to First Union National Bank as Trustee for Mid-State Trust VII ("Ditech") filed its Proof of Claim (Clm. #2-1) (the "Claim") in the amount of \$41,872.07 which is secured by the principal residence of the Debtor. The Claim consists of prepetition arrearage in the amount of \$3,275.15.

3. The Plan provides for the treatment of the claim of Ditech pursuant to §1322(b)(5) by curing the prepetition arrearage and maintaining the continuing monthly mortgage payment.

4. According to the Claim, the monthly mortgage payment was stated to be \$471.36, which is comprised of principal and interest of \$411.68 and monthly escrow of \$59.68.

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<sup>1</sup> The above-referenced Debtor or Debtors shall be referred to herein in the singular as Debtor unless specified otherwise (e.g. Debtor1 or Debtor2).

5. According to the Claim, the prepetition arrearage in the amount of \$3,275.15 consists of the following amounts:

Principal and interest due:	\$2,881.76
Prepetition fees due:	\$0.00
Escrow deficiency for funds advanced:	\$234.28
Projected escrow shortage:	\$656.32
Less funds on hand:	<u>(\$497.21)</u>
Total prepetition arrearage	\$3,275.15

6. The purpose of including the escrow deficiency and projected escrow shortage in the prepetition arrearage is to bring the balance of the escrow account to a sufficient starting point so that the account balance during the upcoming twelve (12) month period, after payments into and disbursements from, will not fall below the required cushion, which is equal to two times the required monthly escrow payment.

7. On May 10, 2019, Ditech filed its Notice of Mortgage Payment Change ("NMPC") (Dkt. #46) with a new total payment of \$608.64 effective as of June 5, 2019 (the "New Payment"). The basis for the change is stated to be due to a change in the required escrow account payment.

8. According to the NMPC, the escrow payment will increase from \$59.68 to \$196.96. The new escrow payment is comprised of the required monthly escrow of \$78.72 (which is an increase based upon anticipated disbursements for taxes) and an escrow shortage of \$118.14. The amount for principal and interest is unchanged.

9. Attached to the NMPC is the Annual Escrow Account Disclosure Statement which reflects prior activity in the escrow account and a projection of activity in the account for the upcoming twelve (12) months. That information is then used to calculate the required escrow payment for the upcoming twelve (12) months, any shortage that may exist in the account, and the new monthly mortgage payment.

10. For the projection of activity contained in the NMPC, the beginning balance as of June 2019 (i.e. the ending balance as of May 31, 2019) is negative \$865.90, and the shortage amount is calculated to be negative \$1,417,62. All further projected calculations, including the calculation of the shortage amount, are based upon the negative beginning balance of \$865.90. When the shortage amount is divided by twelve (12) the result is a monthly escrow shortage payment of \$118.14, which is the amount being collected in the New Payment.

11. As noted in ¶5 above, the escrow deficiency and shortage which existed as of the petition date were included in and will be collected through payment of the prepetition arrearage. The negative beginning balance should no longer exist. The account should have been adjusted so that the escrow account was adequately funded as of the petition date.

12. The collection of the shortage in the New Payment will result in the shortage amount being collected twice. Once as part of the prepetition arrearage and again as the escrow shortage component which is part of the New Payment.

13. The Trustee alleges that the correct monthly mortgage payment should be \$490.50 (principal and interest of \$411.68 + escrow payment of \$78.82).

14. The Trustee requests that the NMPC be disallowed and Ditech be ordered to correct the escrow account, as necessary, to be consistent with the Claim.

WHEREFORE, PREMISES CONSIDERED, Locke D. Barkley, Chapter 13 Trustee, prays that upon notice and hearing that this Court enter its order sustaining the Trustee's Objection and for such other relief to which the Trustee and this bankruptcy estate may be entitled.

Dated: May 30, 2019

Respectfully submitted,  
LOCKE D. BARKLEY, TRUSTEE

BY: /s/ W. Jeffrey Collier  
W. JEFFREY COLLIER, ESQ.  
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MSB No. 10645

**CERTIFICATE OF SERVICE**

I, the undersigned attorney for the Trustee, do hereby certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and I hereby certify that I either mailed by United States Postal Service, first class, postage prepaid, or electronically notified through the CM/ECF system, a copy of the above and foregoing to the Debtor, attorney for the Debtor, the United States Trustee, and other parties in interest, if any, as identified below.

Ditech Financial, LLC  
Post Office Box 6154  
Rapid City, SD 57709-9858

Dated: May 30, 2019

/s/ W. Jeffrey Collier  
W. JEFFREY COLLIER